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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4913/2004

PETITIONER : Santosh Kumar Jhon ,
S/o Late C. P. Jhon,
aged about 57 years, working as
Accountant in Kanger Ghati National
Park, Jagdalpur (C.G.)

- **Versus**-

RESPONDENTS : 1. State of Chhattisgarh,
Through Secretary, Department of
Forest, Mantralaya, D. K. S. Bhawan,
Shastri Chowk, Raipur (C.G.).

2. The Conservator of Forest,
Jagdalpur Circle,
Jagdalpur (Baster) (C.G.).

3. The District Forest Officer,
Datewada (C.G.)

4. The Director,
Kanger Ghati National Park,
Jagdalpur (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT OF MANDAMUS, PROHIBITION, CERTIORARI ETC.OR ANY OTHER DIRECTION OR ORDER TO DO JUSTICE IN THE MATTER.

Details of the petition.

1. PARTICULAR OF THE PETITIONER :

As per cause title.

2. PARTICULARS OF THE RESPONDENTS :

As per cause title.

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Vs.

State of C.G. & ors.

ORDER

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Santosh Kumar Jhon

Vs.

State of C.G. & ors.

Shri H.S. Ahluwalia, counsel for the petitioner.
Shri P.S. Koshy, Dy. Advocate General, for the State.

ORDER

Heard.

2. The petitioner is working on the post of an Accountant in the Forest Department. It is submitted that the petitioner was suspended on the ground that he was absent from duties unauthorisedly vide order dated 9/4/2001 (Annex.P/1) passed by the Divisional Forest Officer. It is further submitted that against the said order the petitioner preferred an appeal before the Conservator of Forest as per Annex.P/2 dated 11/4/2001 on the ground that the Divisional Forest Officer is not competent authority. The said appeal was dismissed by the Conservator of Forest as per Annex.P/3 dated 12/7/2001 stating that the Divisional Forest Officer is the competent authority. It is also submitted that vide Annex.P/4 dated 11/2/2002 an order was passed that the suspension is revoked without any adverse affect on the departmental enquiry, which is being conducted. It is also submitted that petitioner was confirmed on the post of Accountant w.e.f. 1/4/2000 at Dantewada vide order dated 10/7/2001 (Annexure P-5) and the petitioner was given the benefit of higher pay scale vide order dated 10/11/2004 (Annexure P-6). It is also submitted that vide order dated 20/8/2004 (Annexure P-7) the Divisional Forest Officer exonerated the petitioner from the charges and recommended for closing the departmental enquiry. The Divisional Forest Officer vide another order dated 20/8/2004 (Annexure P-8) granted the annual increments to the petitioner holding that

since the petitioner has been acquitted of the charges, the period spent during suspension will be treated as in service. Since the petitioner's suspension was revoked and he was acquitted in the departmental enquiry and the annual increments were granted, so the arrears of bills were passed.

3. It is submitted that on 6/9/2004 the Conservator of Forest, Jagdalpur circle issued an order (Annexure P-10) to the effect that before passing final order in the departmental enquiry of the petitioner, all the orders passed by Shri J.S. Kailashia, D.F.O. Dantewada are cancelled and the orders of payments of arrears of bills during suspension period and the increments are also cancelled. Thereafter, vide Annexure P-11 dated 3/12/2004 the petitioner was called upon to show cause why the disciplinary proceeding be no initiated against him for getting an unauthorized sanction of arrears of bill amounting to Rs. 1,09,478/- . The petitioner submitted reply to the show cause notice vide Annexure P-12.

4. Along with the instant petition, the petitioner filed an interim application (M.W.P. No. 5177/2004) for staying the effect and operation of the order dated 6/9/2004 Annexure P -10 and show cause notice Annexure P -11 and this Court vide order dated 19/4/2005 directed the respondents not to recover amount already drawn by the petitioner pursuant to the order of the D.F.O to the next date of hearing. Thereafter, the petitioner filed another interim application (M.W.P. No. 2232/2005) along with the documents (Annexures A-1 to A-4) and prayed for staying the reopening of the departmental enquiry and the operation of the order dated 31/5/2005 (Annexure A-4) with a further direction to the respondents to allow him to perform his duties at the present place of working and to get monthly salary. The said application was dismissed as withdrawn vide order dated 21/10/2005. Thereafter, the petitioner filed another interim application (M.W.P. No. 2594/2005) claiming the relief of staying the departmental enquiry and the operation of the charge sheet dated 1/2/2005.

5. The respondents filed their return on 23/8/2005 along with an application (M.W.P. No. 3271/2005) for vacating the stay order dated 19/4/2005.

6. Counsel for the parties state that the case itself be heard finally.

7. With the consent of the parties, the matter is heard finally.

8. It is borne out from the record that the petitioner was working on the post of Accountant. He was suspended as per Annexure-P/1 dated 9/4/2001; he preferred an appeal against the suspension as per Annxure-P/2 dated 11/4/2001. The said appeal was dismissed by the Conservator of Forest as per Annexure-P/3 dated 12/7/2001 holding that the Divisional Forest Officer is the competent authority. Then, the suspension order was revoked as per Annexure-P/4 dated 11/2/2002 mentioning therein that it will not have any affect on the departmental enquiry. Thereafter, the Divisional Forest Officer passed an order Annexure-P/7 dated 20/8/2004 exonerating the petitioner from the charges and recommended for closing the departmental enquiry. The Divisional Forest Officer vide another order dated 20/8/2004 (Annexure-P/8) granted the annual increments to the petitioner and further observed that since the petitioner has been acquitted of the charges, the period spent during suspension be treated as in service. Copies of these orders were forwarded to the authorities. Pursuant to these orders passed by the Divisional Forest Officer, the arrears of bills were prepared and passed. On 6/9/2004, the Conservator of Forest Jagdalpur issued an order Anenxure-P/10 stating that the Divisional Forest Officer has passed the orders illegally and as such all orders are cancelled. In the said order, it has also been stated that the direction to treat the suspension period on duty and grant of annual increments are also cancelled. Copy of the said order was forwarded to the Divisional Forest Officer, which shows that the record of proceedings in original, statements of the witnesses and the orders passed were called for. Perusal of the said order goes to show that the Conservator of Forest has passed the order without issuing the notice or without hearing the petitioner. On the one hand, the Conservator of Forest in the order dated 12/7/2001 (Annex.P/3) dismissing the appeal held that the Divisional Forest Officer is competent authority to suspend the petitioner and on

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the other hand he held that the orders Annexures-P/7 dated & P/8 directing to treat the suspension period on duty and grant of annual increments are not sustainable and are cancelled. If the Conservator of Forest or the competent authority feels that the orders are illegal or in contravention of the law, then in that case before nullifying them proper procedure as prescribed under the Rules has to be followed. That has not been done. The Conservator of Forest ought to have issued the notices to the petitioner mentioning the grounds and he should have been given an opportunity. That has not been done in the instant case and the orders passed by the Divisional Forest Officer (Annexures-P/7 & P/8) in favour of the petitioner have been cancelled. The order (Annex.P/10) does not indicate as to why these orders have been cancelled. It also does not indicate even the authority or the provision under which the order has been passed.

9. From the above, it is also clear that the provisions of Rule 15 of the Civil Services (Classification, Control and Appeal) Rules, 1966 have not been followed. Rule 15 of the said Rules is pertinent and is quoted below:

> *"15. Action on the inquiry report- (1) The disciplinary authority if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 14 as far as may be.*
> *(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidence on record is sufficient for the purpose.*
> *(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in rule 10 should be imposed on the Government servants, it shall, notwithstanding anything contained in rule 16, make an order imposing such penalty but in doing so it shall record reasons in writing.*
> *Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant."*

10. In view of the discussions made hereinabove, the order dated 6/9/2004 (Annexure-P/10) and the show cause notice (Annexure-P/11) are set aside with permission to the Department/Competent Authority, if so advised to re-examine after giving due opportunity to the person concerned and proceed strictly in accordance with law.

11. Subject to what has been stated above, the petition stands disposed of. Consequently, all the pending applications stand disposed of.

Sd/-
Fakhruddin
Judge
09/01/2006

H/Gowri-